

NOTE FOR FILE:

3 August 1972

Mr. Colby discussed this with me the other day. I told him that the only reason that we were recommending this was to confirm the arrangements that had been made at the lower levels and we thought that this might be worth while in view of the Director's strong interest in being completely exempted from the legislation. Mr. Colby said that the next time he saw Bernard Rosen, Executive Director, Civil Service Commission, he would mention the Director's interest in being exempted from the legislation.

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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

OFFICE OF THE DIRECTOR

Mr. Robert E. Hampton, Chairman
Civil Service Commission
1900 E. Street, N. W.
Washington, D. C. 20415

Dear Mr. Hampton:

This letter is prompted by the recent Senate approval of S. 1682 and is written in the light of our understanding of the position of the Commission concerning the applicability of federal executive service legislation to this Agency.

Although S. 1682 authorizes the President to exclude agencies from the "Federal Executive Service," there are other provisions in the bill which would apply even to those which have been so excluded. For example, section 3(d) establishes a right of appeal to the Commission if an employee believes there has been a violation of rights granted him under the provisions of the bill, which do apply to excluded agencies. The conflict this could raise with certain statutory authorities and responsibilities involving tenure for Agency employees and protection of intelligence sources and methods has been already covered in detail in a letter from Mr. Harry Fisher to Mr. Seymour Berlin dated 18 April 1972.

It is our understanding that the House Committee version of this legislation is still in draft form but that it will provide for a full and specific exemption for this Agency and its employees, and that the Commission is optimistic that this version will prevail in the Congress.

We appreciate your continued understanding and appreciation of our position and the importance we attach to it.

Sincerely,

W. E. Colby
Executive Director

18 APR 1972

Mr. Seymour S. Berlin
Director, Bureau of Executive Manpower
U. S. Civil Service Commission
1900 E Street, N. W.
Washington, D. C. 20415

Dear Seymour:

As suggested by you, I had the enclosure prepared by a representative of our General Counsel's office. I realize that you understand why inclusion under the Bill would impair our existing authorities, but I am forwarding the enclosure as drafted.

As a follow-on to our discussion the other day, I believe it is significant to note that Section 2. (a) (1), which does exclude us, does not apply to Section 2. (a) (2) (B) nor to Section 2. (2) (B). Further, Section 3. appears to be fully applicable to the Agency.

After you have reviewed the enclosure, I would be interested in hearing from you. It might be desirable to have your lawyers discuss appropriate language changes with members of our General Counsel's office.

We appreciate your cooperation and sympathetic understanding of our problem.

Sincerely,

SIGNED

Harry B. Fisher
Director of Personnel

Enclosure

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H. R. 3807 - Federal Executive Service

1. Although CIA and its employees are specifically excluded from the proposed Subchapter II, "The Federal Executive Service," other provisions in the bill impair existing CIA statutory authorities (and impose new requirements and restrictions) with respect to employees falling within the pay band GS-16 to level V of the Executive Schedule.

2. Section 2(a)(2)(B). This provision conflicts with the Director's personnel management authority including the statutory authority under Section 102(c) of the National Security Act of 1947 to terminate the employment of any Agency officer or employee.

a. The meaning of the term "excepted employee" as used in this provision is ambiguous, but a reading excluding CIA employees from that term would be difficult to sustain. Consequently, the provision would appear to apply to CIA and would require the Agency to either:

(1) enter into an initial employment agreement under 5 USC 3137 which would conflict with the Director's current authorities by:

- (a) establishing tenure of office [3137 (b)];
- (b) limiting scope and purpose of assignment [(d)(1)];
- (c) assuring no reductions in pay [(d)(3)];
- (d) limiting reason for separation to "cause as will

promote the efficiency of the service" [(d)(4)]; or

(2) guarantee no change in tenure or loss of employment and job protection benefits (while it can be argued that this requirement does not affect the Agency since Agency employees do not enjoy tenure or job protection benefits, it can also be argued in context of the language and philosophy of the bill that job security is inherent in all cases where an initial employment agreement is neither offered nor accepted.)

b. Tied to the above provisions are the appeal rights of section 2(a)(3). The existence of an appeal mechanism to preserve "rights" may give credence to the contention in (2) above. Such appeal rights would be in conflict with current law as it applies to CIA.

3. Section 2(b). This provision provides the sole pay fixing authority for incumbents of positions within the pay band GS-16 through 18 who are neither in the FES or an "agency program" under section 3 of subchapter II. This exclusive pay authority constitutes a repeal of current Agency authority to fix such pay.

4. Section 3. This section appears to be fully applicable to Agency positions and presents the following serious problems:

a. It would constitute the only authority for continuing a position within the pay band GS-16 through GS-18 and seeks by general repealer to repeal conflicting authority such as section 8 of the Central Intelligence Agency Act of 1949 (see section 8 attached).

--The language is ambiguous as to whether new positions established after the effective date of the act are subject to this section. It is clearly intended that they be covered.

b. Section 3(b) imposes a requirement on the Agency for external reporting to the Civil Service Commission in conflict with existing law pertaining to the disclosure of information concerning CIA positions (see section 6, CIA Act of 1949 attached).

c. Agency employees currently in the pay band GS-16 through GS-18:

(1) either are brought into the Federal Executive Service or into a similar program established by the Agency pursuant to section 3143 of subchapter II (the extent to which the Agency program would be subject to outside review and determination and its impact on other current Agency authority is fuzzy, a cause for concern by itself), or

(2) could continue to hold this position pursuant to section 3 with a requirement on the Agency to report the fact to the Civil Service Commission. (The authority of section 3 would atrophy as current incumbents leave their positions. The sole authority for establishing new positions and assigning incumbents to them would be an Agency program modeled after the FES.)

5. Conclusion. In view of the above, the Agency's existing authorities would be seriously impaired by sections 2 and 3 of H. R. 3807 which conflict with existing provisions of law pertaining to the hiring and firing of CIA personnel and the disclosure or publication of information concerning CIA positions.

CIA ACT OF 1949

performance of the Agency's functions or to the security of its activities.³⁵

⁵⁰
U.S.C.A.
403g.

SEC. 6. In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 403(d)(3) of this title³⁶ that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of section 654 of Title 5,³⁷ and the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency: *Provided*, That in furtherance of this section, the Director of the Bureau of the Budget shall make no reports to the Congress in connection with the Agency under section 947(b) of Title 5.³⁸

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U.S.C.A.
403h.

SEC. 7. Whenever the Director, the Attorney General, and the Commissioner of Immigration shall determine that the entry of a particular alien into the United States for permanent residence is in the interest of national security or essential to the furtherance of the national intelligence mission, such alien and his immediate family shall be given entry into the United States for permanent residence without regard to their inadmissibility under the immigration or any other laws and regulations,³⁹ or to the failure to comply with such laws and regulations pertaining to admissibility: *Provided*, That the number of aliens and members of their immediate families entering the United States under the authority of this section shall in no case exceed one hundred persons in any one fiscal year.⁴⁰

APPROPRIATIONS

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U.S.C.A.
402j.

SEC. 8. (a) Notwithstanding any other provisions of law, sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out its functions,⁴¹ including—

(1) personal services, including personal services without regard to limitations on types of persons to be employed, and rent at the seat of government and elsewhere; health-service programs as authorized by section 150 [now section 7901] of Title 5,⁴² rental of news-reporting services; purchase or rental and operation of photographic, reproduction, cryptographic, duplication and printing machines, equipment and devices, and radio-receiving and radio-send-

ing equipment and devices, including telegraph and teletype equipment; purchase, maintenance, operation, repair, and hire of passenger motor vehicles, and aircraft, and vessels of all kinds; subject to policies established by the Director, transportation of officers and employees of the Agency in Government-owned automotive equipment between their domiciles and places of employment, where such personnel are engaged in work which makes such transportation necessary, and transportation in such equipment, to and from school, of children of Agency personnel who have quarters for themselves and their families at isolated stations outside the continental United States where adequate public or private transportation is not available; printing and binding; purchase, maintenance, and cleaning of firearms, including purchase, storage, and maintenance of ammunition; subject to policies established by the Director, expenses of travel in connection with, and expenses incident to attendance at meetings of professional, technical, scientific, and other similar organizations when such attendance would be a benefit in the conduct of the work of the Agency; association and library dues; payment of premiums or costs of surety bonds for officers or employees without regard to the provisions of section 14 of Title 6;⁴³ payment of claims pursuant to Title 28; acquisition of necessary land and the clearing of such land; construction of buildings and facilities without regard to sections 259 and 267 of Title 40;⁴⁴ repair, rental, operation, and maintenance of buildings, utilities, facilities, and appurtenances; and

(2) supplies, equipment, and personnel and contractual services otherwise authorized by law and regulations, when approved by the Director.⁴⁵

(b) The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds;⁴⁶ and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director⁴⁷ and every such certificate shall be deemed a sufficient voucher for the amount therein certified.⁴⁸

SEPARABILITY OF PROVISIONS

SEC. 9.⁴⁹ If any provision of this Act, or the application of such provision to any person or circumstances, is held invalid, the

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Approved For Release 2004/12/15 : CIA-RDP74B00415R000600070004-1

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